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APR 14 2010

OFFICE OF PETITIONS

In re Application of :
Wang et al. :
Application No. 10/808,872 : DECISION GRANTING PETITION
Filed: March 24, 2004 : UNDER 37 CFR 1.78(a)(3) AND
Attorney Docket No. 10209.476 : UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed October 14, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

The amendment submitted with the petition herein cannot be accepted since nonprovisional Application No 11/553,323 filed October 26, 2006 was filed later than the above identified application. The parent filing date must be earlier or equal to the current applications' filing date.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment¹ deleting application No 11/553,323 is required.

¹ Note 37 CFR 1.121

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Alicia Kelley at (571) 272-6059.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

| **ATTACHMENT:** Corrected Filing Receipt